

## **DETAILED ACTION**

### **Status of Claims**

1. This action is in reply to the amendment filed on 27 July 2009.
2. Claims 31, 32 and 34-40 have been amended.
3. Claims 1-30, 33, 41-52 and 55 have been canceled.
4. Claims 31, 32, 34-40, 53, 54 and 56-63 are currently pending and have been examined.

### **Claim Rejections - 35 USC § 112**

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 31 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Applicant amended claim 31 to remove the limitation "owned" and replace it with the limitation "controlled." The original disclosure does not support this amendment. Something which is owned by a particular party is not necessarily controlled by that party. Absent support for this amendment in the original disclosure, this new language is deemed impermissible new matter. Applicant further amended claim 31 to remove "means for retrieving" and replace it with "module to retrieve." The original disclosure does not support this amendment. There is no such module in the original disclosure nor has Applicant directed Examiner to any recitations in the original disclosure that might support the newly claimed 'module.' Absent support for this amendment in the original disclosure, this new language is deemed impermissible new matter. For the purposes

of examination, Examiner maintains the previous interpretation of the retrieving limitation as a software functionality/process.

### Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 53, 54 and 56-62 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to a particular machine or apparatus (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here claims 53, 54 and 56-62 fail to meet the above requirements because they are not tied to a specific machine or apparatus and because they do not transform underlying subject matter.
9. Examiner notes the limitation *formulating messages by a salesperson side message interface by said administrator terminal device*. Examiner interprets this limitation to mean that a human operator, i.e. a salesperson, utilizes an *administrator device* to formulate a message. Since the limitation is directed to *formulating* here the human operator is actually completing this step not the specific machine or apparatus. Therefore this limitation does not demonstrate that the method is sufficiently tied to a specific machine or apparatus.
10. Regarding the *reading out* and *transmitting* limitations of claim 53 and the *displaying* limitation of claim 61, based on precedent from the *Diehr* (450 U.S. at 191-92) and *Flook* (437 U.S. at 590) Courts "...even if a claim recites a specific machine or a particular transformation of a specific

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article, the recited machine or transformation must not constitute mere insignificant postsolution activity.” *In re Bilski*, 545 F.3d 943, at 957. Further the *Bilski* decision notes that “postsolution activity” is not narrowly interpreted to mean only a step occurring at the end of a process. Rather, based on precedent from *In re Schrader* (22 F.3d 290) and *In re Grams* (888 F.2d 835), insignificant extra-solution activity is applicable to insignificant steps whether occurring pre-solution, post-solution, or in the middle of the process. *Id.* Specific examples of insignificant activity include data recordation or data gathering steps. *Id.* Such steps are incapable of imparting patent-eligibility under § 101. *Id.* Examiner determined that the *reading out* and *transmitting* of claim 53 and the *displaying* of claim 61 constitute insignificant extra-solution activity because the steps constitute mere data transmission or recordation.

11. Examiner further notes that the material in the preamble of claim 53 does not carry patentable weight in the claim.
12. Accordingly, claims 53, 54 and 56-62 are unpatentable under 35 U.S.C. 101 because the insignificant extra-solution steps are the only steps that include a specific machine or particular transformation and because the insignificant extra-solution steps are incapable of imparting parent-eligibility under § 101. (For further guidance see also the USPTO Memorandum “Guidance for examining Process Claims in view of *In re Bilski*” dated 7 January 2009).

#### Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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14. Claims 53, 54, 56-59 and 61-63 are rejected under 35 U.S.C. 102(e) as being anticipated by Suzuki et al. (U.S. 2003/0078833 A1).

**Claims 53 and 63:**

Suzuki, as show, discloses the following limitations:

- *reading out a message by a customer side message interface, the message regarding a specified company in a company database and formulating using said administrator terminal device, but not including a company database of a service provider, and transmitting the message over the network to customer tables correlated with a salesperson table of the service provider or to customer terminal devices of customer tables extracted according to preset retrieving conditions (see at least Figure 6),*
- *generating a selection registration table by a selection registration section, the selection registration table correlating the salesperson table of a company manager of a specified company with a customer who is a source of an approval signal from each of the customer terminal devices, when a salesperson side message interface receives the approval signal (see at least ¶0061, the selective registration unit accepts MRIDs from user terminals of clients/customers and associated the selected MR with the user and generates a registration table to record the association),*
- *formulating messages by a salesperson side message interface by said administrator terminal device to customers of the customer tables extracted under the preset retrieving conditions, from the customer tables correlated with the salesperson tables of company managers, and allowing the messages formulated to be stored in a message database (see at least ¶0062, the MR-side message interface, prepare delete and store messages),*
- *transmitting from a customer side message interface the messages formulated to the customer terminal devices, over the network, in the name*

*of the company managers or in the name of salespersons of the salesperson tables which are different from tables belonging to the company managers and which are correlated with the customer tables (see at least Figure 9),*

- *transmitting messages formulated from the salesperson side message interface to salesperson terminal devices which are different from the tables belonging to the company managers and which are correlated with the customer tables (see at least Figure 14, item 112),*
- *wherein the salesperson side message interface formats the display so that the messages transmitted/received by the salespersons, directly in charge of the customers, of the salesperson tables different than those belonging to the company managers, can be distinguished from the messages transmitted/received by the company managers (see at least Figure 16, see also at least ¶0073, various messages are sent by various users and each message indicates the identification of the sender including those messages in which the "sender's user ID is a manager ID, see also at least ¶¶0115-0116 and at least Figure 17, Item 186, the communication history for a client can be displayed to the MR so that the MR can visually see all of the messages received/transmitted by/to the client).*

With regard to the various terminals devices of this claim, Suzuki specifically notes "that a plurality of user terminals and a plurality of MR terminals exist" (see at least ¶0054) as well as a support server (which is equivalent to the company terminal) (see at least ¶0050 and ¶0055), further Suzuki notes that a supervisor operates an MR terminal to supervise MRs, so the MR terminal of the Suzuki reference is the same as the administrator terminal of Applicant's claims (see at least ¶0119).

**Claim 32 and 54:**

Suzuki, as shown, discloses the following limitation:

- *the message transmitted to said customer in the name of the company manager or in the names of salespersons of said salesperson tables which are different than those belonging to said company managers includes a return message to the message from said customer (see at least Figure 8, Item 62).*

**Claims 34 and 56:**

Suzuki, as shown, discloses the following limitation:

- *said salesperson side message interface allows the salesperson terminal device belonging to said company manager of each company to browse the transmission/receipt hysteresis (list) of messages with said customers of the totality of salespersons of the company databases excepting said company database of said system provider (see at least Figure 17, Item 17).*

**Claims 35 and 57:**

Suzuki, as shown, discloses the following limitation:

- *said salesperson side message interface provides the salesperson terminal devices with customer-based use data over the network (see at least ¶0115).*

**Claims 36 and 58:**

Suzuki, as shown, discloses the following limitation:

- *said company databases excepting said company database of said system provider group together a plurality of customer tables out of the totality of customer tables correlated with the salesperson tables of the company managers (see at least ¶Figures 17 and 18).*

**Claims 37 and 59:**

Suzuki, as shown, discloses the following limitation:

- *having unread message extracting means for extracting unread messages in the name of each company manager or in the name of the salespersons of*

*said salesperson tables which are different than those belonging to said company managers (see at least Figure 17, Item 184),*

- *responding customer extracting means of extracting the customers whose messages to the company managers or to salespersons of the salesperson tables different than those belonging to said company managers have been received within a present time (see at least Figure 16),*
- *customer name extracting means for extracting customers of interest based on all or part of customer names entered as the retrieving conditions (see at least Figure 12),*
- *said retrieving means extracting preset customers by said narrowing-down means and/or said customer name extracting means (see at least Figure 19).*

**Claims 39 and 61:**

Suzuki, as shown, discloses the following limitation:

- *said customer side message interface displays on said customer terminal device the salespersons of the salesperson tables correlated with the totality of customer tables of the company databases other than the database of said service provider, provided that the salespersons displayed are not approved by said customer (see at least Figure 10).*

**Claim 40 and 62:**

Suzuki, as shown, discloses the following limitation:

- *each time a new customer table is added to said salesperson tables different than those belonging to said company managers, said new customer table is added to said totality of customer tables correlated with the salesperson tables of said company managers (see at least Figure 3, Item 318 is the customer table).*

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15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. Claims 31, 32 and 34-37, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (US 2003/0078833 A1) alone. Examiner notes that the rejections for claims 32-37, 39 and 40 are listed above because the claims are substantially the same as the claims 54-59, 61 and 62.

**Claims 31:**

Suzuki, as show, discloses the following limitations:

- *a plurality of customer terminal devices of customers, a plurality of salesperson terminal devices of salespersons in charge of said customers, a plurality of company terminal devices supervised by a company manager of a company that said sales persons belong to (see at least figure 1, plurality of terminals, items 4 and 5, "a plurality of user terminals and a plurality of MR terminals exist" see at least ¶0054),*
- *an administrator terminal device supervised by a service provider; wherein said plurality of customer terminal devices, said plurality of salesperson terminal devices, said plurality of company terminal devices and said*



*administrator terminal device are interconnected over a network, and in which messages are communicated with said customer terminal devices, said salesperson terminal devices, said company terminal devices and said administrator terminal device or said network (see at least figure 1, items 1 and 3; Suzuki notes that a supervisor operates an MR terminal to supervise MRs, so the MR terminal of the Suzuki reference is the same as the administrator terminal of Applicant's claims, see at least ¶0119),*

- *a plurality of customer databases each adapted for storage therein of a customer table to which private data of a customer has been entered (see at least ¶0061, client database and ¶0083, "...storing them in the client table of the client database..."),*
- *a selection registration section for accepting registration from said customer terminal device of identification data of the salesperson approved by said customer and for generating/holding the selection registration table correlating the salesperson table of the salesperson identified by said identification data with said customer table (see at least ¶0061, the selective registration unit accepts MRIDs from user terminals of clients/customers and associated the selected MR with the user and generates a registration table to record the association),*
- *a message database for holding a message sent from said salesperson to said customer and a message sent from said customer to said salesperson (see at least ¶0065, message database, accessible by both the sales person and the client),*
- *retrieving module to retrieve the customer table correlated with said salesperson table by said selection registration table (see at least figure 12, items 115 and 120-125, by clicking on client list an MR may retrieve a client from among a plurality of clients; ¶0062, the MR-side message interface, see*

also at least Figures 12-19, item 115, client list, ¶0061, selection registration table, see also at least ¶0060, MR support server, as in Applicant's invention, the Suzuki invention engages the software capabilities to retrieve the requested information),

- *a salesperson side message interface for assisting in formulation of a message to said customer by said salesperson terminal device, said company terminal device and said administrator terminal device with generation of said selection registration table as an incentive; said salesperson side message interface also reading out the message formulated by said customer from said message database and sending the message thus read out to said salesperson terminal device and said company terminal device (see at least ¶0062, the MR-side message interface),*
- *a customer side message interface for reading out the message prepared by said salesperson from said message database to send the message thus read out to said customer terminal device, and for assisting in formulation of the message by said customer terminal device (see at least ¶0063, client-side message interface),*
- *at least one of the salesperson tables of the company database of said service provider is correlated with the totality of customer tables correlated with the salesperson tables of the totality of said company databases, inclusive of said company database of said system provider, by said selection registration table (see at least Figure 3),*
- *at least one of the salesperson tables of each of the company databases excepting said company database of said service provider is a salesperson table belonging to a manager of each company; the salesperson table of said company manager is correlated with the totality of the customer tables*

*correlated by said selection registration table (see at least ¶0121, a manager managing a plurality of MRs),*

- *said customer side message interface reading out a message concerning a specified one of the companies of said company databases excepting said company database of said system provider and formulating using said administrator terminal device from said message database and transmitting the message read out over said network to the totality of customer tables correlated with said salesperson table of said service provider or to customer terminal devices of customer tables extracted by said retrieving means subject to preset retrieving conditions (see at least Figure 16,),*
- *said customer side message interface on receipt of an approval signal from each of said customer terminal devices allowing said selection registration section to generate the selection registration table correlating the salesperson table of said company manager of said specified company with the customers of the sources of transmission of said approval signals (see at least Figure 6, Item 33 “management,” see also at least ¶0058, customer approves of an MR by registering a code, ¶0061 selective registration table relies uses approval/registration information to associate MRs with customers, ¶0063 MRs contact customers after the customer approves them, see also at least ¶0120, when an MR is approved the MR’s company is also approved and company information may be forwarded to the customer and prioritized over non-approved companies),*
- *said salesperson side message interface assisting in formulating messages by said administrator device to customers of said customer tables extracted under said preset retrieving conditions by said retrieving means from the totality of customer tables correlated with the salesperson tables of the*

*company managers of said companies, and allowing the messages formulated to be stored in said message database (see at least Figure 14),*

- *said customer side message interface transmitting the messages formulated to said customer terminal devices, over said network, in the name of said company managers or in the name of salespersons of said salesperson tables which are different than those belonging to said company managers and which are correlated with said customer tables (see at least Figure 9),*
- *said salesperson side message interface transmitting the messages formulated to salesperson terminal devices which are different than those belonging to said company managers and which are correlated with said customer tables (see at least Figure 14),*
- *wherein the salesperson side message interface formats the display so that the messages transmitted/received by the salespersons, directly in charge of the customers, of the salesperson tables different than those belonging to the company managers, may be distinguished by said salesperson terminal devices from the messages transmitted/received by the company managers (see at least Figure 16, see also at least ¶0073, various messages are sent by various users and each message indicates the identification of the sender including those messages in which the "sender's user ID is a manager ID, see also at least ¶¶0115-0116 and at least Figure 17, Item 186, the communication history for a client can be displayed to the MR so that the MR can visually see all of the messages received/transmitted by/to the client),*
- *at least one of said company databases is controlled by a service provider (see at least ¶0119, Suzuki notes that a supervisor operates an MR terminal to supervise MRs, so the MR terminal of the Suzuki reference is the same as the administrator terminal of Applicant's claims; Examiner notes that inherently a computer/server/software package is controlled at some level at*

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some point by some entity, this limitation therefore does not effect the cope of the invention),

With respect to the following limitation, Suzuki, as shown, discloses the following limitations except Suzuki does not specifically disclose a company table. However, Suzuki does disclose identifying the company to which and MR belongs and sorting data by company, see at least ¶0056 and Figure 3.

- *a plurality of company databases each adapted for storage therein of a company table of a company, supervising a plurality of salespersons belonging to said company, a plurality of salesperson tables, each provided for each salesperson belonging to said company, and a selection registration table for correlating said customer tables and the salesperson tables to each other (see at least ¶0061, "MR database contains an MR table and a selective registration table"),*

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to alter the invention of Suzuki to add additional tables to track companies since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

18. Claims 38 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (US 2003/0078833 A1) in view of **Official Notice**.

**Claims 38 and 60:**

Suzuki does not specifically disclose the following limitation:

- *said salesperson side message interface performs the processing of refraining from transmitting all messages in case it is unable to transmit the messages to all of said customers simultaneously*

However, Examiner takes **Official Notice** that it is old and well known in the art for a messaging system not to send messages that have transmission errors and to report to the sender which messages had transmission errors and were not sent. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the old and well known message transmission feature of detecting and recording transmission errors with the invention of Suzuki since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

#### **Response to Arguments**

19. Applicant's arguments filed 27 July 2009 have been fully considered but they are not persuasive. The rejections above have been updated to reflect Applicant's amendments; however the previous rejections are maintained.
20. Regarding the independent claims and specifically claim 31 (the only independent claim presently amended), Applicant argues that Suzuki fails to disclose that (1) one of the company databases is controlled by a service provider, and that (2) at least one table is correlated with the totality of customer tables (see pages 12-13 of Applicant's response), that (3) "Suzuki fails to disclose an 'approval signal'... and "after receiving acknowledge signal, transmitting the messages" (see page 13 of Applicant's response), that (4) Suzuki fails to disclose that the interface formats the display so that messages may be differentiated (see page 14 of Applicant's remarks), and that (5) Suzuki does not teach or suggest any data retrieval capability (see page 15 of Applicant's remarks).
21. Regarding Applicant's argument (1), as stated in the previous Office action, in ¶0119, Suzuki notes that a supervisor operates an MR terminal to supervise MRs, so the limitation indicating that a party *controls* a database is disclosed by Suzuki. Further the Suzuki reference teaches that many entities engage and 'control' databases by performing actions that alter the data

contained therein. Further Examiner notes that inherently a computer/server/software/data is controlled at some level at some point by some entity. As with the proprietorship limitation in the previous claim set, which entity has control in this limitation does not effect the scope of the invention. The limitation 'a database is controlled by a service provider' is non-functional descriptive material because it only serves to identify/describe who is doing an inherent action. For these reasons Examiner has not given the 'service provider' portion of the limitation patentable weight. As shown in the rejections above, the Suzuki reference meets all of the functional and structural limitations of the claims. See MPEP 2106 for further guidance on non-functional and functional descriptive material. Also, as noted in the 112 rejection above, 'control' is different from 'owned' and, although this is an inherent feature to the Suzuki reference, Applicant's specification does not appear to have support for this limitation and Applicant's inclusion of this limitation in the claims suggests that perhaps the ability to control databases is not inherent to Applicant's invention. Applicant also argues that Suzuki fails to disclose that "a company database is assigned to a customer of the service provider," however this limitation is not in the claim and further it is not clear, given Applicant's previous claim of "ownership" if 'assigned' means 'sold-to' or 'tasked-to.'

- 22.** Regarding Applicant's argument (2), as stated in the rejection above, Suzuki does disclose sales person tables being correlated with the "totality of customer tables" (see page 13 of Applicant's remarks). Suzuki specifically discloses that generating the selective registration table requires "associating the client table with the MR table" (see ¶0061). Examiner interprets the words "associating" and "correlating" to mean the same thing, especially in light of the specification which does not disclose a different definition or explanation of this limitation. Applicant was concerned that Examiner relied on ¶0121 to teach the limitation in question. However, Examiner cited ¶0061 to teach the limitation in an earlier-appearing limitation where the *correlating* limitation first appeared. ¶0121 was relied on to teach limitations regarding management tables. Often, when individual limitations are complex and multifaceted as above, Examiner will not provide repeated citations for limitations that reappear throughout the claims. This is intended to

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aid Applicant in understanding Examiner's interpretation of unique limitations and of the prior art. Applicant's current arguments fail to specifically point out how the language of the claims patentably distinguishes them from the references. Applicant merely concludes that the cited prior art is not the same as Applicant's claim without any further explanation. Examiner will not attempt to guess at what the possible distinctions might be. The claim language remains broad and nebulous and Examiner has sufficiently outlined how Examiner interprets the claims and identified where Suzuki teaches the claimed subject matter. Examiner is confident that given the level of ordinary skill in the art and the teachings of Suzuki that the claimed correlation/association capability is neither novel nor non-obvious.

23. Regarding Applicant's argument (3), as shown in the rejections above, Suzuki discloses an invention with the capability of sending/*transmitting* messages. Further Suzuki discloses an approval signal; see at least ¶0058, a potential client, "the person engaged in medical services," approves of an MR by registering the MRID code. The code registration serves as the approval signal for the database that allows the database to associate the client with the MR (see also ¶0061, the selective registration table, and ¶0063, MR contacts only customers that have approved of the MR). Further in ¶¶0061 and 0058, Suzuki emphasizes that transmissions to the potential customers occurs after the MR is approved by the potential customer. At ¶0120, Suzuki discloses that after an MR is approved the MR's company is also approved and company information may be forwarded to the customer and prioritized over non-approved companies. This information is sent by the company and not necessarily the MR. As shown in the rejections above, the Suzuki reference meets all of the functional and structural limitations of the claims. Applicant argues that the claim limitation is very specific that messages are transmitted to the customer after the approval signal is received; and as noted previously and repeated above Suzuki teaches this limitation. Applicant argues "the Office action has failed to specifically state what in Suzuki corresponds to the present "approval signal" as taught in the present application in para. [0221] in the published application and fig 10" (see page 13 of Applicant's remarks, emphasis added). Examiner reminds Applicant that the contents of the specification are not read



into the claims. The claim language was properly interpreted and rejected. Any further limitations that may exist in the specification must be put in the claims before they may be relied on to overcome a claim rejection. As noted previously, the registration of the MRID serves as an approval of the MR (approval signal; Examiner notes that Suzuki specifically states that this is an “approval” of the MR in ¶0058) which is necessary before the MR may transmit messages to the client. Applicant’s interpretation of Suzuki ¶0058 on page 14 of Applicant’s remarks unjustifiably narrow.

- 24.** With respect to Applicant’s argument (4), Applicant argues that Suzuki fails to teach a claimed display format of an interface that is capable of indicating the senders and recipients of messages (see pages 14-15 of Applicant’s remarks). Applicant specifically argues “thus, the display informs the salesperson that the message was transmitted from the company manager” (see page 14 of Applicant’s remarks). As noted in the rejection above, ¶0073 specifically indicates that various messages are sent by various users and each message indicates the identification of the sender including those messages in which the “sender’s user ID is a manager ID.” Suzuki also discloses (see at least ¶¶0115-0116) and illustrates (see at least Figure 17, Item 186) that the communication history for a client can be displayed to the MR so that the MR can visually see all of the messages received/transmitted by/to the client. As far as the technical requirement that the display is formatted so that a viewer can distinguish information, this is inherent. In order for a viewer to know who sent a message or to see a message the display must be formatted to that the information is discernable. Applicant argues that the limitation should be interpreted more narrowly to mean that “the display itself needs to be formatted in such a way as to distinguish these two different types of messages” (see page 15 of Applicant’s remarks); however Applicant fails to cite support to the specification to explain this supposed distinction. Examiner has nevertheless reviewed the specification and the figures and cannot find a feature that is distinguishable over Suzuki in this regard. The language of the claim is broad and Applicant has not attempted to narrow the language to better describe this feature. The cited prior art adequately discloses the ‘claimed’ limitation.

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25. Next Applicant argues that (5) Suzuki does not teach or suggest any data retrieval capability (see page 15 of Applicant's response). In fact this statement is false. Examiner noted in the rejection above that Suzuki discloses structural as well as functional non-structural features that are equivalent to the claimed *retrieving module* (see at least ¶0062, the MR-side message interface, see also at least Figures 12-19, item 115, client list, ¶0061, selection registration table, see also at least ¶0060, MR support server). Examiner maintains the broad construction of this claim to mean any software function capable of retrieving the specified data (as noted in the previous rejection) because of the breadth of the limitation 'module' and the failure of the specification to provide any further definition/limitation that might force a narrower construction. Again Applicant's argument is merely a stated conclusion and does not describe why Applicant believes that Suzuki does not disclose the ability to retrieve data generally nor specifically why Applicant believes that Suzuki does not disclose the ability to retrieve the customer from among other customers.
26. Regarding Examiners official notice taken to teach claims 38 and 60. The common knowledge or well-known in the art statement is taken to be admitted prior art because applicant did not traverse the examiner's assertion of official notice. MPEP 2144.03(C).
27. Applicant's § 101 arguments regarding claim 31 are moot because the amended claim overcomes the previous § 101 rejection.
28. Regarding claims 53, 54 and 56-62 Applicant argues that the claims are patentable under 35 U.S.C. §101 because (6) *In re Bilski* is presently before the U.S. Supreme court and therefore Applicant doubts that "the Patent Office's position on the law is correct" (see page 11 of Applicant's remarks), (7) that Examiner misinterpreted "by a salesperson side message interface" and clearly "a software interface and not a human" is performing the "formulating" step (see page 12 of Applicant's arguments), and because (8) Examiner improperly "asserted" without support that 'reading out, transmitting and displaying' are post solution or extra solution activities.
29. Regarding Applicant's argument (6) Examiner regrets that Applicant disapproves of the Patent Office's application of the law in this respect. However, Examiner is only capable of presenting rejections in alignment with Office's current policies and interpretations of the law. Presently,

despite the fact the *In re Bilski* is before the Supreme Court, the case remains controlling precedent pending any new guidance from the Supreme Court.

30. Regarding Applicant's argument (7), the specific limitation "by a salesperson side message interface" was interpreted in view of the specification to mean that a salesperson uses the interface to formulate the messages, not that the interface itself formulates the messages. The specification only supports an MR using the interface and it is clear that the MR formulates the message (see at least pp 23 and 49 of the specification). The claim is directed to formulating, and because there is not a device performing the 'formulating' step the limitation is not tied to the recited device. For demonstration purposes, I am presently using a computer and an interface to formulate this Office action. But I am doing the formulating, not the computer and not the interface I am using.
31. Regarding Applicant's argument (8), as noted in the previous rejection and repeated above, Examiner explained where the terminology 'extra solution activity' is found in the case law which serves as the support for the Offices current policies and practice. The sources specifically state that examples of insignificant extra solution activity include data recordation or data gathering steps. The steps in question are data recordation or transmission steps. The Office recognizes that in some situations the transmission/recordation steps are the significant portions of an invention; however this is not the case in the present application because the present invention is directed to 'a marketing assisting method' not a data storage method, or a data transmission method. Here the data storage and transmission features are extra-solution, they are part of the method, but they are not capable of imparting patent-eligibility under § 101. Examiner notes that the determination of 'insignificant extra solution activity' and Examiners application of this § 101 rejection is explained in the 7 January 2009 and 24 August 2009 memos which may be found on the USPTO website at the following location: <http://www.uspto.gov/web/patents/memoranda.htm>.

### **Conclusion**

- 32.** The rejections are maintained in this action. Examiner notes that Applicant has not yet requested an interview. Examiner is confident that an interview will help Applicant understand the Office's § 101 position and how to overcome the current 101 rejection. Examiner notes that Applicant has repeated several arguments several times and nevertheless Examiner remains confident that Suzuki teaches the claimed invention. Perhaps Applicant and Examiner do not understand each other's position and an interview may help advance prosecution in this regard as well.
- 33. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
- 34.** A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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35. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Nathan C Uber** whose telephone number is **571.270.3923**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Eric Stamber** can be reached at **571.272.6724**.
36. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).
37. Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks**

**P.O. Box 1450, Alexandria, VA 22313-1450**

or faxed to **571-273-8300**.

38. Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window**:

Randolph Building  
401 Dulany Street  
Alexandria, VA 22314.

/Nathan C Uber/ Examiner, Art Unit 3622  
19 October 2009

/Arthur Duran/  
Primary Examiner, Art Unit 3622